Supreme Court, U.S.
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(H)

No. 00-360

IN THE
Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

v.

CYPRUS AMAX COAL COMPANY, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

SUPPLEMENTAL BRIEF OF RESPONDENTS CYPRUS AMAX COAL COMPANY, ET AL.

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SUPPLEMENTAL BRIEF OF THE RESPONDENTS

Pursuant to this Court's Rule 15.8, respondents file this supplemental brief to address the relevance of the Court's decision in *Hatter v. United States*, No. 99-1978 (U.S. May 21, 2001) ("*Hatter II*"), which was not available when respondents filed their Opposition to the Petition for a Writ of Certiorari.[1]

As the United States noted in its petition for a writ of certiorari in this case, "the sole authority" relied upon by the court of appeals for the proposition that respondents could bring a damages action based on the Export Clause as a self-executing constitutional provision, and independently of the tax refund statute, 26 U.S.C. § 7422(a), "was [the Federal Circuit's] own decision in *Hatter v. United States*, 953 F.2d 626 (Fed. Cir. 1992)" ("*Hatter I*"). Petition at 11. In *Hatter II*, the Court has now upheld on the merits the self-executing constitutional damages action in that case, striking down under the Compensation Clause the 1983 imposition of social security taxes on federal judges' salaries. Slip. op. 13-19.

In addition to the reasons stated in respondents' initial opposition, *Hatter II* confirms that the petition here should be denied. In affirming the court of appeals' ruling with respect to social security taxes, *Hatter II* has necessarily sustained the Federal Circuit's jurisdictional predicate for both that litigation and this – that a self-executing constitutional provision can be the basis for a direct Tucker Act damages

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[1] Respondents presume that consideration of the petition in this case has been held pending a ruling in *Hatter II*.

action independently of the tax refund statute.[2] Moreover, *Hatter II* recognized the applicability of the six-year statute of limitations of 28 U.S.C. §§ 2401(a) & 2501 to cases of this category. Slip op. 5.

Accordingly, this case presents no issues worthy of certiorari. Nothing in *Hatter II* calls into question the Federal Circuit's decision in this case. To the contrary, this Court's affirmance in *Hatter II* with respect to social security taxes fully supports the jurisdictional and statute-of-limitation rulings of the court below.

Accordingly, the petition should be denied.

Respectfully submitted,

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[2] Given the jurisdictional nature of this rule, it had to be considered by the Court in *Hatter II* even if not raised by the parties. *E.g.*, *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93 (1998) (citing *Mt. Healthy City Bd. of Ed. v. Doyle*, 429 U.S. 274, 278-79 (1977) and *Great Southern Fire Proof Hotel Co. v. Jones*, 177 U.S. 449, 453 (1900)).